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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,668	10/17/2003	Gregg L. Sheddy	TN-3305	2621

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Black & Decker Inc.
701 E. Joppa Road, TW-199
Towson, MD 21286

EXAMINER

LEE, LAURA MICHELLE

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/688,668	Applicant(s) SHEDDY ET AL.	
	Examiner LAURA M. LEE	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5, 66-69, 71, 80-81, 83-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 66-69, 71, 80-81, 83-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/15/2010 has been entered. Claims 1, 3, 5, 66-69, 71, 80-81, 83-85 are pending, and claim 1, 66, 67 are currently amended.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent 6,347,624), herein referred to as Smith in view of Tsao (U.S. Patent 6,263,866) and in further view of Greenland (U.S. Patent 6,276,990).

Smith discloses a saw comprising: a base (100) formed as a tub; a frame assembly (300) disposed on the base; a first rail (310; fig. 7) disposed on the frame assembly (300), the first rail (310) having a longitudinal axis; a saw assembly (500)

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disposed on at least one of the base and the frame assembly, the saw assembly comprising a support assembly (400), a motor assembly (500) and a cutting wheel (fig. 1) driven by the motor assembly, the cutting wheel having a plane substantially parallel to the pivot axis; a table (210) slidably disposed on the first rail through at least one set of wheels (290/291; fig. 4) and mounted to an underside thereof, so as to be movable relative to the saw assembly in a direction substantially parallel to the longitudinal axis; wherein one of the frame assembly and the support assembly has a first post, and the other of the frame assembly and the support assembly has a first hole for receiving the first post; and one of the frame assembly and the support assembly has a second post and the other of the frame assembly and the support assembly has a second hole for receiving the second post (see the two screws/bolts not numbered in Fig.1 attaching the arm 400 to the frame), wherein the first rail (310) has a first end, and the table and the at least one set of wheels are movable beyond the first end (through slots 110 in the base 100; see Figs. 2 and 9A-C).

Smith does not disclose that the rail is adjustable in a direction lateral to the longitudinal axis that the motor assembly pivotally supported by the support assembly, the support assembly remaining stationary relative to pivotal movement of the motor assembly and the motor assembly being pivotable about a pivot axis substantially parallel to the longitudinal axis and a switch electrically connected to the motor assembly and disposed above the table and proximate to the motor assembly. In regards to the adjustable rail, attention is further directed to the Tsao reference. Tsao also discloses a tile cutter with a rail system for moving a table and workpiece towards

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and away from the cutting blade. Tsao discloses designing the rail system to be adjustable by utilizing a plurality of transverse screw holes to attach the rails to the frame (col. 2, lines 7-12). It is well known that the elongated holes allow the rail to be slid in a lateral direction to correct for variances in machining tolerances and overall improvement in performance. It similarly would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated elongated screw holes with the Smith rail and frame system to provide for the adjustability of the rails, allowing for an improvement in the engagement of the table wheels and the rails and thus the control of the workpiece during cutting.

The modified device of Smith still does not teach a saw where the motor assembly is pivotally supported by the support assembly, the support assembly remaining stationary relative to pivotal movement of the motor assembly and the motor assembly being pivotable about a pivot axis substantially parallel to the longitudinal axis and a switch electrically connected to the motor assembly and disposed above the table and proximate to the motor assembly. The first claim limitations read on a motor assembly that is pivotable to create bevel cuts in the workpiece, and the support assembly is stationary during the movement of the saw blade. Attention is directed to the Greenland tile saw. Greenland discloses an alternative configuration for the saw assembly, in which the saw assembly is positioned on a U-shaped frame, such that the saw and the motor assembly are pivotable in order to position the blade to make bevel cuts in the workpiece. Bevel cuts are well known in the cutting arts for chamfering and angular cutting of the workpiece for example for fitting tile pieces about corners and

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other not 180-degree surfaces. It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted or modified the cutting assembly of Lee for the cutting assembly of Greenland to allow for movement of the saw blade relative to the support assembly as taught by Greenland for the similar benefit of increasing the versatility of the cutting tool by allowing for angular cuts to be created in the workpiece. Although there must be a switch on the Smith saw to power on and off the motor, Smith does not disclose its location and therefore does not disclose that it is disposed above the table and proximate to the motor assembly. However, again, Greenland discloses providing the switch (28) on the motor, which is a common location for the power switch. It similarly would have been obvious to one having ordinary skill in the art to have incorporated the switch on the Smith motor as taught by Greenland to power on and off the motor during use of the assembly.

In regards to claim 2, the modified device of Smith discloses wherein the first rail (310) has a first end, and the table (210) is movable beyond the first end (Fig. 9C).

In regards to claim 3, the modified device of Smith discloses wherein the table (210) is movable beyond the base (300) (Fig. 9C).

In regards to claim 5, the modified device of Smith discloses wherein the rail is aluminum (col. 5, lines 62-65).

In regards to claim 85, the modified device of Smith discloses wherein the posts (screws) have different widths. Each screw/post has a larger head and a threaded section. Therefore, the one post has a different width (the threaded section) as compared to the other post (the head).

4. Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent 6,347,624), herein referred to as Smith in view of Tsao (U.S. Patent 6,263,866) and in further view of Greenland (U.S. Patent 6,276,990) and in further view of Sigetich et al. (U.S. Patent 4,428,159). The modified device of Smith discloses the claimed invention except is silent as to the type of switch and therefore does not appear to disclose that the switch comprises a single throw, double pole switch (i.e. a toggle switch). However, attention is directed to the Sigetich tile saw cutter which utilizes a toggle switch (51) to energize and de-energize the motor 31 and the pump 53 at the same time. As toggle switches are old and well known in the art for providing on/off connections, it would have been obvious to one having ordinary skill in the art to have utilized a toggle switch in the modified device of Smith to turning the power on/off.

5. Claim 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent 6,347,624), herein referred to as Smith in view of Tsao (U.S. Patent 6,263,866) and in further view of Greenland (U.S. Patent 6,276,990) and in further view of Lee (U.S. Patent 5,676,124), Jameson (3,777,792), Weissman (4,885,965), Mayfield (5,063,806), Rueb (5,577,428), Welch (5,906,538), and Gorgol et al (6,273,081). In regards to claim 80, the modified device of Smith discloses wherein the support assembly comprises a support member (420; fig. 10) disposed on at least one of the base and the frame assembly and a generally U-shaped member (410) coupled to the support member (420). The modified device of Smith does not disclose that the switch

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is on the generally U-shaped member. However, attention is also directed to the Lee, Jameson, Weissman, Mayfield, Rueb, Welch, Greenland, and Gorgol et al. references. These references are cited as cumulative evidence that it is well known in the art to locate the power switch for a cutting tool almost anywhere on a saw. Thus, even though the specific location of the switch that Applicant is claiming is not specifically taught, the indication from the prior art is that the location of the switch would have been an obvious matter of design choice dependent on the suitability of that location for whatever desired reason, such as dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the work piece and/or product. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided a switch on the saw as claimed, such as on the u-shaped member (420), as suggested by Lee, Jameson, Weissman, Mayfield, Rueb, Welch, Greenland, and Gorgol et al. on the Smith device in order to accommodate dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the workpiece and/or product. In addition, it is also noted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the switch in an alternative location in order to accommodate dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the work piece and/or product since it has been held the shifting of parts to different positions is a known variable. *In re Japikse*, 86 USPQ 70 (CCPA 1950).

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6. Claims 67-68, 83 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent 6,347,624), herein referred to as Smith in view of Tsao (U.S. Patent 6,263,866) and of Greenland (U.S. Patent 6,276,990) and in further view of Lee (U.S. Patent 5,676,124), Jameson (3,777,792), Weissman (4,885,965), Mayfield (5,063,806), Rueb (5,577,428), Welch (5,906,538), and Gorgol et al (6,273,081). In regards to claims 67 and 68, Smith discloses a saw comprising: a base (100); a frame assembly (300) disposed on the base; a first rail (310) disposed on the frame assembly, the first rail having a longitudinal axis; a table (210) slidably disposed on the first rail through at least one set of wheels (290/291) mounted to an underside thereof, the table being movable in a direction substantially parallel to the longitudinal axis; a saw assembly (500) disposed on at least one of the base and the frame assembly, the saw assembly comprising a support assembly (400), a motor assembly (500) pivotally supported by the support assembly (400), and a cutting wheel (not numbered) driven by the motor assembly, the cutting wheel having a plane substantially parallel to a bevel axis; and wherein the support assembly comprises a support member (420) disposed on at least one of the base and the frame assembly and a generally U-shaped member (410) having first and second legs (the two sections of the U) and wherein the first rail(310) has a first end (Fig. 9C), and the table (210) and the at least one set of wheels (290/291) are movable beyond the first end (see at least Figs. 9A-9C).

Smith does not disclose that the rail is adjustable in a direction lateral to the longitudinal axis that the motor assembly pivotally supported by the support assembly,

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the support assembly remaining stationary relative to pivotal movement of the motor assembly and the motor assembly being pivotable about a pivot axis substantially parallel to the longitudinal axis and a switch electrically connected to the motor assembly and disposed on the support assembly so that, when the motor assembly is pivoted about the bevel axis, the switch remains stationary, and the switch is disposed on the U-shaped member.

In regards to the adjustable rail, attention is further directed to the Tsao reference. Tsao also discloses a tile cutter with a rail system for moving a table and workpiece towards and away from the cutting blade. Tsao discloses designing the rail system to be adjustable by utilizing a plurality of transverse screw holes to attach the rails to the frame (col. 2, lines 7-12). It is well known that the elongated holes allow the rail to be slid in a lateral direction to correct for variances in machining tolerances and overall improvement in performance. It similarly would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated elongated screw holes with the Smith rail and frame system to provide for the adjustability of the rails, allowing for an improvement in the engagement of the table wheels and the rails and thus the control of the workpiece during cutting.

The modified device of Smith still does not teach a saw where the motor assembly is pivotally supported by the support assembly, the support assembly remaining stationary relative to pivotal movement of the motor assembly and the motor assembly being pivotable about a pivot axis substantially parallel to the longitudinal axis and a switch electrically connected to the motor assembly and disposed above the table

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and proximate to the motor assembly. The first claim limitations read on a motor assembly that is pivotable to create bevel cuts in the workpiece, and the support assembly is stationary during the movement of the saw blade. Attention is directed to the Greenland tile saw. Greenland discloses an alternative configuration for the saw assembly, in which the saw assembly is positioned on a U-shaped frame, such that the saw and the motor assembly are pivotable in order to position the blade to make bevel cuts in the workpiece. Bevel cuts are well known in the cutting arts for chamfering and angular cutting of the workpiece for example for fitting tile pieces about corners and other not 180-degree surfaces. It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted or modified the cutting assembly of Lee for the cutting assembly of Greenland to allow for movement of the saw blade relative to the support assembly as taught by Greenland for the similar benefit of increasing the versatility of the cutting tool by allowing for angular cuts to be created in the workpiece.

Although there must be a switch on the Smith saw to power on and off the motor, Smith does not disclose its location and therefore does not disclose that it is disposed on the support assembly so that, when the motor assembly is pivoted about the bevel axis, the switch remains stationary, and the switch is disposed on the U-shaped member. However, attention is also directed to the Lee, Jameson, Weissman, Mayfield, Rueb, Welch, Greenland, and Gorgol et al. references. These references are cited as cumulative evidence that it is well known in the art to locate the power switch for a cutting tool almost anywhere on a saw. Thus, even though the specific location of the

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switch that Applicant is claiming is not specifically taught, the indication from the prior art is that the location of the switch would have been an obvious matter of design choice dependent on the suitability of that location for whatever desired reason, such as dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the work piece and/or product. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided a switch on the saw as claimed, such as on the u-shaped member (420), as suggested by Lee, Jameson, Weissman, Mayfield, Rueb, Welch, Greenland, and Gorgol et al. on the Smith device in order to accommodate dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the workpiece and/or product. In addition, it is also noted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the switch in an alternative location in order to accommodate dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the work piece and/or product since it has been held the shifting of parts to different positions is a known variable. *In re Japikse*, 86 USPQ 70 (CCPA 1950).

In regards to claim 68, the modified device of Smith discloses wherein the motor assembly is pivotally supported by first and second legs of the U-shaped member (i.e. Smith 400 or Greenland 16)

In regards to claim 83 and 84, the modified device of Smith discloses wherein the switch is disposed on the support assembly so that when the motor assembly is pivoted

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(bevel angle as modified) about the bevel axis, the support assembly and the switch remain stationary relative to the pivotal movement of the motor assembly.

7. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsao in view of Smith et al. (U.S. Patent 6,347,624), herein referred to as Smith in view of Tsao (U.S. Patent 6,263,866) and of Greenland (U.S. Patent 6,276,990) and in further view of Lee (U.S. Patent 5,676,124), Jameson (3,777,792), Weissman (4,885,965), Mayfield (5,063,806), Rueb (5,577,428), Welch (5,906,538), and Gorgol et al (6,273,081) and in further view of McCambridge et al. (U. S. Patent 4,350,193), herein referred to as McCambridge, Marcoux et al. (U.S. Patent 3,342,226) Brenta (U.S. Patent 4,105,055), Sanfillipo (U.S. Patent 6,745,803) and Otto (U.S. Patent 5,161,590). The modified device of Smith discloses the use of an electrical plug to power the saw from a wall outlet, but not disclose that the end of the plug/cord is instead terminated at an electrical outlet. However, attention is directed to the McCambridge, Marcoux, Brenta, Sanfillip and Otto reference that all discloses work tables with directly incorporated outlets. These references are cited as cumulative evidence that it is well known in the art to utilize an outlet on a worktable such as shown by Greenland instead of directly engaging the power tool with an AC wall outlet. The outlets provide available and convenient electrical power for utilization with a plurality of tools at the same time, such that only a single cord is required to run to the wall outlet, instead of two cords to operate both the pump and the motor of the saw. It similarly would have been obvious to one having ordinary skill in the art to have incorporated an outlet into the Smith

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support instead of the plug as taught by McCambridge, Marcoux, Brenta, Sanfillip and Otto to minimize the number of cords to power the pump and saw motor plugged into a wall outlet or to power additional tool attachments.

8. Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent 6,347,624), herein referred to as Smith in view of Tsao (U.S. Patent 6,263,866) and of Greenland (U.S. Patent 6,276,990) and in further view of Lee (U.S. Patent 5,676,124), Jameson (3,777,792), Weissman (4,885,965), Mayfield (5,063,806), Rueb (5,577,428), Welch (5,906,538), and Gorgol et al (6,273,081) and in further view of Sigetich et al. (U.S. Patent 4,428,159) The modified device of Smith discloses the claimed invention except is silent as to the type of switch and therefore does not appear to disclose that the switch comprises a single throw, double pole switch (i.e. a toggle switch). However, attention is directed to the Sigetich tile saw cutter which utilizes a toggle switch (51) to energize and de-energize the motor 31 and the pump 53 at the same time. As toggle switches are old and well known in the art for providing on/off connections, it would have been obvious to one having ordinary skill in the art to have utilized a toggle switch in the modified device of Smith to turning the power on/off.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 3, 5, 66-69, 71, 80-81, 83-85 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA M. LEE whose telephone number is (571)272-8339. The examiner can normally be reached on Monday through Friday, 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura M Lee/
Primary Examiner, Art Unit 3724
01/03/2010